

AWARD NO. 23

CASE NO. 26

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension of Cook's Helper (Laborer) D.W. Glascock effective August 29, 1977 was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 18-3 MW-20 3/3/78B)
- (2) That D. W. Glascock now be compensated for all time lost and the discipline be stricken from his record."

OPINION OF THE BOARD:

Claimant D. W. Glascock, was hired as an extra gang laborer on March 29, 1976, at Quincy, Illinois, in the Maintenance of Way Track Sub-department. At the time of the incident at issue, he was working as a cook's helper in the kitchen car on Sled Gang No. 25 at West Quincy, Illinois. While working there he was under the supervision of Cook T. R. Mays.

At or about 7:15 a.m., July 25, 1977, Claimant was involved in an altercation with Cook T. R. Mays. As a result of this incident, notice under date of July 26, 1977, was issued jointly to the two men as follows:

"Attend investigation in the office of the Trainmaster, West Quincy, Missouri, at 10:30 AM, Wednesday, August 3, 1977, for the purpose of ascertaining the facts and determining responsibility in connection with your alleged involvement in altercation which took place at about 7:15 AM, July 25, 1977, at West Quincy, Missouri."

Cook T. R. Mays acknowledged receipt of the notice but failed to appear, and has not been heard from since. Subsequent to the investigation, Claimant was advised by letter of August 25, 1977 that he was being assessed thirty (30) days actual suspension.

Claim was timely filed by the Organization on behalf of Claimant and handled at all stages of appeal up to and including Carrier's highest appellate officer. It is properly before this Board for consideration.

In seeking to have the assessed discipline set aside, the Organization argues that 1) the foreman of the Sled Gang was negligent in not preventing the altercation; and 2) Claimant was provoked into his physical altercation with Cook T. R. Mays. There is no indication on the record before us to sustain the Organization's position concerning the Sled Gang foreman. Quite the contrary, there is testimony to suggest that had the foreman intervened such intervention would have been to no avail.

Carrier Rule 701(B) is of relevance to the Organization's second argument:

"Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate superior."

There is evidence in the record transcript (see Q&A 18) that Claimant "struck the first blow". Even if, arguendo, Mr. Mays' verbal assaults were provocation to Claimant's physical response, it does not exculpate the latter's behavior. As was held in Award 2-7121:

"Absent direct attack, there is generally no excuse for engaging in an altercation with a fellow employee on time during which both are being paid by their employer to work. See Awards 2191, 4098, and 6481.***"

Based upon the foregoing we do not find that Carrier's assessment of discipline was either unjustified or excessive. Accordingly, the claim is denied.

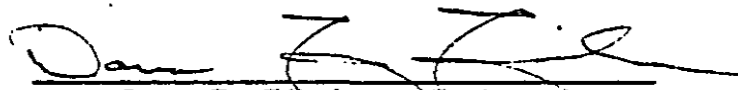
FINDINGS:


Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


L. K. Hall, Carrier Member


F. H. Funk, Employee Member

Date: July 15, 1980